

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN MEDINA CRUZ and JOSE ARRIAGA  
GALINDO, *individually and on behalf of others*  
*similarly situated,*

*Plaintiffs,*

-against-

BAGEL BOSS OF MURRAY HILL INC. (d/b/a  
BAGEL BOSS), RANDY ROSNER, and DONALD  
ROSNER,

*Defendants.*

16-cv-08269-PGG

SETTLEMENT AGREEMENT  
AND  
RELEASE

This Settlement Agreement and General Release of Claims ("Agreement") is entered into by and among Plaintiffs Benjamin Medina Cruz and Jose Arriaga Galindo ("Plaintiffs") on the one hand, and Bagel Boss of Murray Hill Inc. (d/b/a Bagel Boss) (the "Defendant Corporation"), Randy Rosner and Donald Rosner (the "Individual Defendants") (collectively the Defendant Corporation and the Individual Defendants are the "Defendants"), on the other hand.

WHEREAS, Plaintiffs allege that they worked for Defendants as employees; and

WHEREAS, a dispute has arisen regarding Plaintiffs' alleged employment and the terms thereof, which dispute has resulted in the filing of an action in the United States District Court for the Southern District of New York, Civil Action No: 16-cv-08269-PGG (hereinafter "the Litigation"), alleging, among other things, a violation of federal and state wage and hour and overtime laws;

WHEREAS, Defendants deny any violation of federal and state wage and hour and overtime laws; and

WHEREAS, the parties desire to resolve all disputes between them without the necessity of further litigation;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Payment: Defendants shall pay or cause to be paid to Plaintiff, subject to the terms and conditions of this Agreement, and as full, complete, and final settlement and final satisfaction of any and all claims or potential claims Plaintiffs may have against Defendants from the beginning of time through the Effective Date of this Agreement, including all counsel fees

and costs incurred by Plaintiffs, the gross sum of Ten Thousand Dollars (\$10,000.00) (the "Settlement Amount") to be paid to Plaintiffs' attorneys in two (2) installments, as follows:

(a) Installment One: Defendants shall deliver to Plaintiffs a check in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00), made payable to "Michael A. Faillace Esq., as Attorney for Plaintiffs for deposit upon execution of the settlement documents (and to be held in escrow until approval of the settlement documents), payable as follows: \$1,666.67 to Plaintiff Benjamin Medina Cruz, \$1,666.67 to Plaintiff Jose Arriaga Galindo and \$1,666.66 to Michael Faillace & Associates, for attorney's fees.

(b) Installment Two: Defendants shall deliver to Plaintiffs, within 10 days of approval of the settlement documents, a check in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00), for immediate deposit, made payable to "Michael A. Faillace Esq., as Attorney for Plaintiffs, payable as follows: \$1,666.67 to Plaintiff Benjamin Medina Cruz, \$1,666.67 to Plaintiff Jose Arriaga Galindo and \$1,666.66 to Michael Faillace & Associates, for attorney's fees.

2(a). Plaintiffs' counsel shall file with the court a stipulation of dismissal as against the Defendants, with prejudice, in the form set forth in Exhibit A to this Agreement once the Agreement has been approved by the Court and the first installment has been received by Plaintiffs and cleared in Plaintiffs' counsel's escrow account. There shall be no distribution of settlement funds from Plaintiffs' counsel's escrow account until the Court "so orders" the dismissal of this action.

2(b). Plaintiffs shall be solely responsible for any taxes resulting from payments received under the Agreement. Plaintiffs shall indemnify and hold each of the Defendants harmless to the fullest extent permitted by law, including the payment of any damages, penalties, interest, and/or attorneys' fees that may be incurred by Defendants resulting from payment under this Agreement.

Payment set forth above shall be delivered to the office of Michael Faillace & Associates, P.C. to the attention of Michael Faillace, Esq., at 60 East 42nd Street, Suite 4510, New York, NY 10165.

2(c). Confessions of Judgment: Concurrently with the execution of this Agreement, Defendants Bagel Boss of Murray Hill Inc. (d/b/a Bagel Boss), and Randy Rosner shall each execute and deliver to Plaintiffs' counsel confessions of judgment ("Confessions of Judgment") in the form annexed hereto as Exhibits B and C, respectively. The Parties hereby acknowledge and agree that the Confessions of Judgments will be held in escrow by Plaintiffs' counsel, and will not be entered and/or filed at any time other than (i) in the event that the Defendants fail to make any of the installment payments as set forth above, i.e., one of the postdated checks fails to clear Plaintiffs' counsel's escrow account, and (ii) Defendants fail to cure such default within ten (10) days of receipt of written notice (to be delivered to Defendants by email and first class mail via their counsel, Jay L. Yackow, Esq., 355 Post Avenue, Suite 201, Westbury, New York 11590 NY).

3. Release and Covenant Not To Sue: Plaintiffs hereby irrevocably and

unconditionally releases from and forever discharges and covenant not to sue Defendants, and for each of them, their heirs, successors, assigns, affiliates, parent organizations, subsidiaries, directors, owners, shareholders, members, agents, attorneys, legal representatives and managers any and all charges, complaints, claims, causes of action, suits, debts, liens, contracts, rights, demands, controversies, losses, costs and or expenses, including legal fees and any other liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, whether fixed or contingent (hereinafter referred to as "claim" or "claims") which each Plaintiffs at any time have, had, claims or claimed to have against Defendants relating specifically to the claims in the Litigation that have occurred as of the Effective Date of this Agreement. Similarly, Defendants release and discharge Plaintiffs from any and all known claims, and liabilities of any kind that they have, had or claimed to have against Plaintiffs relating specifically to the claims in the Litigation that have occurred as of the Effective Date of this Agreement.

4. No Admission of Wrongdoing: This Agreement and compliance with this Agreement shall not be construed as an admission by Defendants of any liability whatsoever, or of any violation of any statute, regulation, duty, contract, right or order.

5. Modification of the Agreement: This Agreement may not be changed unless the changes are in writing and signed by a proper representative of Plaintiffs and Defendants.

6. Acknowledgment: Plaintiffs acknowledge that they have been fully and fairly represented by counsel in this matter. Defendants acknowledge that they have consulted with counsel for the purpose of this Agreement.

Plaintiffs and Defendants acknowledge that they are not relying upon any statement, representation or promise in executing this Agreement except for statements, representations or promises expressly set forth in this Agreement. They further acknowledge and agree that the only consideration for signing this Agreement is as set forth in this Agreement.

7. Notices: Notices required under this Agreement shall be in writing and shall be deemed given on the first business day following first-class mailing and electronic transmission thereof. Notice hereunder shall be delivered to:

To Plaintiffs:

Michael Faillace, Esq.  
**MICHAEL FAILLACE & ASSOCIATES, P.C.**  
60 East 42<sup>nd</sup> St. Suite 4510  
New York, NY 10165  
Tel: (212) 317-1200  
Fax: (212) 317-1620  
Email: michael@faillacelaw.com

To Defendants:

Jay L. Yackow  
Attorney At Law  
355 Post Avenue, Suite 201  
Westbury, New York 11590  
Tel: (516) 997-4040  
Fax: (516) 997-4005  
Email: [jyackow@yackowlaw.com](mailto:jyackow@yackowlaw.com)

9. Governing Law: This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of New York, excluding the conflict-of-laws principles thereof. The parties consent and stipulate to the personal jurisdiction of the United States District Court for the Southern District of New York and the Supreme Court of the State of New York in any subsequent proceeding to enforce this Agreement.

10. Enforceability: If any provision of this Agreement is held to be illegal, void, or unenforceable, such provision shall be of no force or effect. However, the illegality or unenforceability of such provision shall have no effect upon, and shall not impair the legality or enforceability of, any other provision of this Agreement, provided, however, that upon any finding by a court of competent jurisdiction that a release or waiver of claims or rights or a covenant set forth herein is illegal, void or unenforceable, Plaintiffs agree to promptly execute a release, waiver and/or covenant that is legal and enforceable.

11. Release Notification: Defendants advised Plaintiffs to discuss the terms of this Agreement and release of claims with their legal counsel and Plaintiffs acknowledge that they have consulted with Michael Faillace, Esq. of Michael Faillace & Associates, P.C., Plaintiffs acknowledge that it is their choice to waive any potential claims in return for the benefits set forth herein and that they made this decision after careful thought and a reasonable period of time to consider this Agreement, and after an opportunity to consult with their attorneys. Plaintiffs confirm that this Settlement Agreement and General Release has been translated to them in Spanish and that they understand the terms of this Agreement and they are signing this Agreement voluntarily.

12. Counterparts: To signify their agreement to the terms of this Agreement and General Release, the parties have executed this Agreement on the date set forth opposite their signatures, which appear below. This Agreement may be executed in two or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original but all of such counterparts together shall constitute but one and the same instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart. This agreement may also be executed by facsimile transmission.

By: BENJAMIN MEDINA CRUZ

Date: \_\_\_\_\_

By: JOSE ARRIAGA GALINDO

Date: \_\_\_\_\_


Defendants:

BAGEL BOSS OF MURRAY HILL INC. (d/b/a BAGEL BOSS)

By: 

Print Name Randy Rosner

Date: 4/25/18


By:   
RANDY ROSNER

Date: 4/25/18

By:   
DONALD ROSNER

Date: 4/25/18

Plaintiffs:

By:  \_\_\_\_\_  
BENJAMIN MEDINA CRUZ

Date: 4/26/18

By:  \_\_\_\_\_  
JOSE ARRIAGA GALINDO

Date: 4/26/18

Defendants:

BAGEL BOSS OF MURRAY HILL INC. (d/b/a BAGEL BOSS)

By: \_\_\_\_\_

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
RANDY ROSNER

Date: \_\_\_\_\_

By: \_\_\_\_\_  
DONALD ROSNER

Date: \_\_\_\_\_

**Exhibit A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN MEDINA CRUZ and JOSE ARRIAGA  
GALINDO, *individually and on behalf of others*  
*similarly situated,*

*Plaintiff,*

*-against-*

BAGEL BOSS OF MURRAY HILL INC. (d/b/a  
BAGEL BOSS), RANDY ROSNER, and DONALD  
ROSNER,

*Defendants.*

16-CV-8269-PGG

**STIPULATION OF VOLUNTARY  
DISMISSAL WITH PREJUDICE**

IT IS HEREBY STIPULATED and agreed, by and between the undersigned attorneys for the parties, that the Complaint and any and all claims that were or could have been asserted in this action against Defendants BAGEL BOSS OF MURRAY HILL INC. (d/b/a BAGEL BOSS), RANDY ROSNER, and DONALD ROSNER are hereby dismissed in their entirety, with prejudice, and with each party to bear its own costs, expenses, disbursements, and attorneys' fees.

Date: New York, New York  
11/30, 2018

Jay L. Yackow  
Attorney At Law  
355 Post Avenue, Suite 201  
Westbury, New York 11590  
Tel: (516) 997-4040  
Fax: (516) 997-4005  
Email: [jyackow@yackowlaw.com](mailto:jyackow@yackowlaw.com)  
*Attorneys for Defendants*

Michael A. Faillace, Esq.  
MICHAEL FAILLACE & ASSOCIATES, P.C.  
60 East 42<sup>nd</sup> St., Suite 2540  
New York, NY 10165  
Tel.: 212-317-1200  
Fax: (212) 317-1620  
Email: [michael@faillacelaw.com](mailto:michael@faillacelaw.com)  
*Attorneys for Plaintiff*

**Exhibit B**

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

-----	x	
BENJAMIN MEDINA CRUZ, and JOSE	:	
ARRIAGA GALINDO, <i>individually and on behalf</i>	:	
<i>of others similarly situated,</i>	:	Index No.:
	:	
<i>Plaintiffs,</i>	:	<b><u>AFFIDAVIT OF CONFESSION OF</u></b>
	:	<b><u>JUDGMENT</u></b>
<i>-against-</i>	:	
	:	
BAGEL BOSS OF MURRAY HILL INC.	:	
(d/b/a BAGEL BOSS), RANDY ROSNER,	:	
and DONALD ROSNER,	:	
	:	
<i>Defendants.</i>	:	
-----	x	

STATE OF NEW YORK        )  
                                      : ss.:  
COUNTY OF NASSAU        )

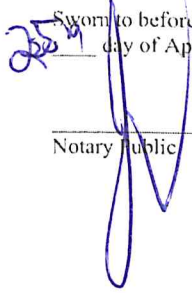
RANDY ROSNER, being duly sworn, deposes and says:

1. I reside in Nassau County.
2. Pursuant to the terms of the Settlement Agreement and General Release by and between Benjamin Medina Cruz and Jose Arriaga Galindo (each a "Plaintiff" and collectively, "Plaintiffs") and Bagel Boss of Murray Hill, Inc., Randy Rosner, and Donald Rosner (each a "Defendant" and collectively, "Defendants"), to which this Affidavit is annexed, I hereby confess judgment and authorize entry thereof in New York County against me individually and in favor of Plaintiffs for the sum of Ten Thousand Dollars and Zero Cents (\$10,000.00).
3. This affidavit of confession of judgment is for a debt justly due to Plaintiffs under the terms of the Settlement Agreement, to which this Affidavit is annexed, which provides that Defendants are to submit a total sum of \$10,000 to Plaintiffs.
4. This affidavit is made upon good and valuable consideration, the sufficiency of which I acknowledge on behalf of Defendants, including, without limitation, the terms and provisions of the Settlement Agreement.

Thousand Dollars and Zero Cents (\$10,000.00) (less any amounts already paid to Plaintiffs pursuant to the above schedule), against me, RANDY ROSNER.

  
RANDY ROSNER

Sworn to before me this  
25<sup>th</sup> day of April 2018

  
Notary Public

JAY L. YACKOW  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 4793749  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES OCT. 31, 2021

**Exhibit C**



the terms of the Settlement Agreement, to which this Affidavit is annexed, which provides that Defendants are to submit a total sum of \$10,000 to Plaintiffs.

2. This affidavit is made upon good and valuable consideration, the sufficiency of which I acknowledge on behalf of Defendants, including, without limitation, the terms and provisions of the Settlement Agreement.

3. I hereby represent my understanding that upon Defendants' breach of the Settlement Agreement and failure to cure, this Confession of Judgment shall be docketed and entered in the Supreme Court of the State of New York, New York County, as a judgment for Ten Thousand Dollars and Zero Cents (\$10,000.00) (less any amounts already paid to Plaintiffs pursuant to the above schedule), against Bagel Boss of Murray Hill Inc.

Bagel Boss of Murray Hill Inc.

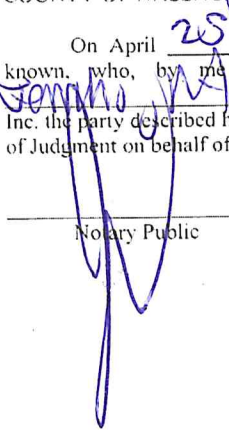
By: 

RANDY ROSNER

Title: President

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NASSAU )

On April 25<sup>th</sup>, 2018, before me personally came RANDY ROSNER, to me known, who, by me duly sworn, did depose and say that deponent resides at 2000 1<sup>st</sup> Avenue, that deponent is the President of Bagel Boss of Murray Hill Inc. the party described herein, and that deponent executed the foregoing Affidavit of Confession of Judgment on behalf of Bagel Boss of Murray Hill Inc. and was authorized to do so.

  
\_\_\_\_\_  
Notary Public

JAY L. YACKOW  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 4793749  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES OCT. 31 2021